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STATE FOR WHA/AND LPETRONI
COMMERCE FOR JANGLIN
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SUBJECT: GOB SETTLES INVESTMENT DISPUTE INVOLVING BECHTEL

¶1. (U) Summary: The legal chapter of the 2000 Cochabamba "water war" has come to a close, with the GOB and two international shareholders (one of them half owned by U.S. engineering multinational Bechtel) settling their long-festering investment dispute. Under the agreement, the GOB will purchase - for a total of USD 25 cents - eighty percent of the shares in Aguas del Tunari, the joint venture company selected to manage the Cochabamba water concession (and whose assets were allegedly expropriated by the GOB), and assume the company's liabilities. The settlement averts a possible ruling against the GOB in a case before the International Center for the Settlement of Investment Disputes (ICSID) and suggests that the threat of arbitration is less leverage in Bolivia than it might seem. End summary.

BACKGROUND

¶2. (U) In April 1999, the GOB issued a tender to improve water and wastewater services for Cochabamba's 600,000 residents, many of whom lacked piped water or effective sanitation services. Two foreign investors, International Water Limited, a firm half-owned by U.S. engineering and construction multinational Bechtel, and Abengoa, a Spanish construction company, pursued the tender, forming a joint venture company called Aguas del Tunari. The two international investors owned 55 and 25 percent of the shares, respectively, with four Bolivian firms accounting for the remaining 20 percent.

¶3. (U) Aguas del Tunari won the bid, and in painstaking contract negotiations, secured GOB acquiescence to a 35 percent average hike in unit rates for water and sewerage services, effective January 1, 2000. According to the agreed tariff structure, low-income residents would pay only 10 percent more, while the largest hikes (106 percent) would be reserved for high-volume users.

¶4. (U) Aguas del Tunari began operating Cochabamba's water and wastewater system in November 1999, increasing water supply by 30 percent in its first two months through repairs

to the city's existing network. Improved supply and availability led residents to use significantly more water, which meant many incurred substantially higher bills.

¶5. (U) In mid-January 2000, the rate hikes began to fuel opposition to the contract. Several civic groups began demonstrating in early February, and protests then spread across the country. The GOB dispatched military personnel in early April to attempt to quell the unrest, but additional violence erupted. In the course of several protests, six Bolivians were killed. Aguas del Tunari discontinued operations, and the GOB cancelled the contract.

¶6. (U) In May 2000, Aguas del Tunari suggested that the GOB negotiate an amicable settlement of the company's claims for compensation, estimating the value of assets allegedly expropriated by the GOB at USD 25 million. After 17 months of fruitless discussions, Aguas del Tunari filed a request for arbitration with the International Center for the Settlement of Investment Disputes (ICSID), a World-Bank affiliated body with jurisdiction over the case by virtue of a bilateral investment treaty between Bolivia and the Netherlands, where the company's majority shareholder, International Water Limited, is registered.

¶7. (SBU) Comment: Many see these developments, broadly referred to as the Cochabamba "water war," as the opening volley of a gathering popular revolt against Bolivia's so-called neo-liberal economic model. In this view, the MAS's decisive victory in the December elections represents the culmination, or at least the latest accomplishment, of this powerful social movement. End comment.

THE SETTLEMENT

¶8. (SBU) While waiting for ICSID to determine whether it would reject GOB objections to its jurisdiction and review the case, Aguas del Tunari's international shareholders continued settlement negotiations with GOB officials. Michael Curtin, President of Aguas del Tunari and a Bechtel consultant to International Water Limited, told us the GOB agreed in mid-December 2005 to purchase - for a total of two bolivianos, or USD 25 cents - the shares held by International Water and Abengoa. In so doing, the GOB will acquire 80 percent ownership of Aguas del Tunari and avert a possible negative arbitral finding in the ICSID case. As both defendant and (as Aguas del Tunari's new owner) claimant, the GOB can now simply cancel the arbitration. The settlement agreement also freed the two international shareholders of any and all liabilities relating to the case.

¶9. (SBU) Putting a positive spin on the deal, Curtin told Econoff January 10 that all sides win in the agreement: President Rodriguez and President-Elect Morales can say they avoided arbitration and saved Bolivia a potential USD 25 million negative arbitral finding, and the two international shareholders can relinquish any remaining liabilities and extricate themselves from a longstanding investment dispute. Curtin said the investors hope to sign the settlement agreement before January 22, when the new administration takes office.

COMMENT

¶10. (SBU) While resolving a long-festering problem is a definite plus for all sides, the significance of the deal for investors in Bolivia is ambiguous at best. Aguas del Tunari negotiators appear to have decided that accepting a settlement now is better than trying to retrieve a USD 25 million investment in protracted arbitration negotiations from a government whose future willingness and ability to pay up is in doubt. The case suggests that arbitration is less leverage in Bolivia than it might seem - a lesson that hydrocarbons companies, seven of which have sent arbitration

trigger letters to the GOB, are likely to view with concern.
GREENLEE